

(B)

LRB-2410/24 PZ
ARG:cjs:nwn stays
D-Note

in 6/25

seen

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

furnishing or using certain consumer

Reger cost

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2

AN ACT to create 100.55 of the statutes; relating to: the use of nonpublic loan information in solicitations and providing a penalty.

Analysis by the Legislative Reference Bureau

insert ANAC

This bill prohibits, with two exceptions, any person from using any loan number, loan amount, or other specific loan information that is not generally available to the public (loan identification information) in any solicitation for the purchase of any service or product. This prohibition does not apply to any communication by a lender to any present or former customer of the lender or to any solicitation directed to a person who has authorized the use of his or her loan identification information. Any person who violates this prohibition may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. In addition, any person whose loan identification information is used in violation of this prohibition, or any lender that made the loan from which this information is derived, may bring a civil action for twice the amount of actual damages caused by the violation or \$500, whichever is greater.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 100.55 of the statutes is created to read:

100.55 Use of nonpublic loan information in solicitations. (1) In this

section:

furnishing or using certain consumer
to make
(B)

insert
2-1 →

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(c)
(a) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

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(d)
(b) "Lender" means any of the following:

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1. A financial institution, as defined in s. 214.01 (1) (jn).

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2. A finance company licensed under ss. 138.09 or 218.0101 to 218.0163.

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3. A mortgage banker, loan originator, or mortgage broker registered under s.

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224.72.

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4. Any other person, not identified in subds. 1. to 3., the primary business of

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which is to make loans or engage in lending activities in this state.

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5. Any person that controls, is controlled by, or is under common control with

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a lender described in subds. 1. to 4.

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(c) "Loan identification information" means any loan number, loan amount, or

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other specific loan information that is not generally available to the public, including

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such information obtained from a consumer reporting agency.

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(2) (a) Except as provided in pars. (b) and (c), no person may use loan

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identification information in any solicitation for the purchase of any service or

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product.

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(b) This subsection does not apply to a communication by a lender to a present

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or former customer of the lender.

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(c) This subsection does not apply to a solicitation directed to a person who has

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authorized the use of loan identification information in solicitations of that person.

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(3) (a) Any person who violates sub. (2) ^(a) ^{or (3)} may be required to forfeit not less

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than \$100 nor more than \$1,000 for each violation.

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(b) The department shall investigate violations of this section. The department

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or any district attorney may on behalf of the state:

the attorney
general,

insert
2-14

1 1. Bring an action for temporary or permanent injunctive or other relief for any
 2 violation of this section. In such an action for injunctive relief, irreparable harm is
 3 presumed. The court may, upon entry of final judgment, award restitution when
 4 appropriate to any person suffering loss because of a violation of this section if proof
 5 of such loss is submitted to the satisfaction of the court.

6 2. Bring an action in any court of competent jurisdiction for the penalties
 7 authorized under par. (a).

8 (c) In addition to any other remedies, any person ^{aggrieved by a} whose loan identification ^{violation of sub. (2)}
 9 ~~information is used in violation of sub. (2) (a), or any lender that made the loan from~~ ^{or (3)}
 10 ~~which this information is derived,~~ may bring a civil action for damages. In such an
 11 action, any person who violates sub. (2) ^{(or (3))} (a) shall be liable for twice the amount of
 12 actual damages caused by the violation or \$500, whichever is greater, and,
 13 notwithstanding s. 814.04 (1), the costs of the action, including reasonable attorney
 14 fees. In such an action, the court may also award any equitable relief that the court
 15 determines is appropriate. A person who violates sub. (2) (a) is not liable to both the
 16 person whose loan identification information is used and the lender that made the
 17 loan for the same damages.

(END)

D-Note

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2410/P2ins
ARG:.....

INSERT ANAL:

Under current federal law, the Fair Credit Reporting Act (FCRA) imposes requirements and restrictions on certain uses of consumer information. Under the FCRA, the definition of a "consumer report" includes any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit to be used primarily for personal, family, or household purposes. A "consumer reporting agency" is any person, including a business entity, that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third-parties.

Under the FCRA, a consumer reporting agency may furnish a consumer report only under specified circumstances. Among these circumstances, a consumer reporting agency may furnish information to a person that it has reason to believe intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer. Absent authorization by the consumer, a consumer reporting agency may furnish a consumer report relating to a consumer in connection with a credit transaction that is not initiated by the consumer (a "prescreened consumer report") only if all of the following apply: (1) the transaction consists of a firm offer of credit; (2) the consumer reporting agency has complied with its obligations relating to maintaining a system allowing consumers to elect not to be the subject of prescreened consumer reports; and (3) the consumer has not elected to be excluded from the consumer reporting agency's prescreened consumer reports. A prescreened consumer report is limited to the name and address of the consumer, an identifier that is not unique to the consumer, and other information pertaining to the consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity. The consumer reporting agency may also furnish a record of inquiries in connection with credit transactions not initiated by the consumer for the previous one-year period.

Under the FCRA, if a person uses a prescreened consumer report in connection with a credit transaction not initiated by the consumer, the person must provide, with each written solicitation made to the consumer, a clear and conspicuous statement containing certain information, including that the person's prescreened consumer report was used in connection with the transaction, that the person received the offer of credit because the consumer satisfied certain criteria under which the consumer was selected for the offer, and that the consumer has a right not

to be the subject of prescreened consumer reports and how to make this election. The user of the prescreened consumer report must also maintain on file certain information relating to the offer of credit made. In addition, each consumer reporting agency must maintain reasonable procedures designed to limit the furnishing of consumer reports to authorized purposes under the FCRA. These procedures must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Each consumer reporting agency must make a reasonable effort to verify the identity of a new prospective user and the uses certified by this prospective user prior to furnishing the user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for an authorized purpose. A person may not use or obtain a consumer report for any purpose other than an authorized purpose, as certified to the consumer reporting agency by the prospective user.

This bill imposes certain state law restrictions on the dissemination and use of trigger lead information, which restrictions vary depending on whether or not the trigger lead is a consumer report under the FCRA. The bill defines "trigger lead" as information relating to a consumer that is furnished by a consumer reporting agency or personal financial data provider to a nonaffiliated third-party if all of the following apply: (1) the consumer has applied to a lender, other than the third-party to whom the information is furnished, for an extension of credit and the lender has provided the consumer's credit application, or information derived from or related to the consumer's credit application, to a consumer reporting agency or personal financial data provider for purposes of obtaining a consumer report or otherwise evaluating or rating the consumer's creditworthiness; (2) the information furnished to the third-party includes the consumer's name and address or telephone number, or other information that allows the third-party to identify the consumer; (3) the information furnished to the third-party contains, with respect to the extension of credit for which the consumer has applied, any loan number or other identifying number assigned to the consumer by the lender, any identification of the amount of credit for which the consumer has applied, or any other information that is related to the terms and conditions of credit for which the consumer has applied and that is not generally available to the public; and (4) the consumer has not authorized the consumer reporting agency or personal financial data provider to provide the information to the third-party and has not initiated any credit transaction with the third-party. The bill incorporates various federal law definitions from the FCRA. The bill also defines "personal financial data provider" as any person, other than a consumer reporting agency, that regularly engages in whole or in part in the practice of assembling and furnishing to third-parties, for a fee or payment of dues, the identity of particular consumers and financial information relating to such consumers that is not generally available to the public, including information derived from any application by these consumers for an extension of credit or other nonpublic personal information, as defined under the federal Gramm-Leach-Bliley Act, relating to these consumers.

Under the bill, if any trigger lead is not a prescreened consumer report under federal law, a person, which includes a business entity, may not furnish the trigger lead to a nonaffiliated third-party unless the person reasonably believes that the third-party will not use the trigger lead to solicit any consumer identified in the trigger lead. Any person that furnishes such a trigger lead to a nonaffiliated third-party must establish and maintain procedures to reasonably ensure that the trigger lead will not be used to solicit any consumer identified in the trigger lead. A person that obtains such a trigger lead may not use the trigger lead to solicit any consumer identified in the trigger lead.

Under the bill, if any trigger lead is a prescreened consumer report under federal law, a person that obtains a trigger lead and uses the trigger lead to solicit any consumer identified in the trigger lead may not utilize unfair or deceptive practices in soliciting the consumer. Unfair or deceptive practices include all of the following: (1) failure to state in the initial phase of the solicitation that the person soliciting is not the lender, and is not affiliated with the lender, to which the consumer has applied for an extension of credit; (2) failure in the initial solicitation to comply with any applicable requirement under the FCRA relating to prescreened consumer reports; (3) knowingly or negligently utilizing information regarding consumers who have elected to be excluded from being the subject of prescreened consumer reports or who have registered under the federal or state do-not-call list programs; (4) soliciting consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment; and (5) making false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

Any person who violates any prohibition or requirement under the bill may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. The Department of ~~Financial Institutions (DFI)~~ must investigate violations of the prohibitions or requirements under the bill, and ~~DFI~~, the attorney general, or any district attorney may bring an action for these violations. In addition, any person aggrieved by a violation may bring a civil action for twice the amount of actual damages caused by the violation or \$500, whichever is greater.

*Agriculture,
Trade and
Consumer
Protection (DATCP)*

(*)

DATCP

INSERT 2-1:

- (a) "Consumer" has the meaning given in 15 USC 1681a (c). ✓
- (b) "Consumer report" has the meaning given in 15 USC 1681a (d). ✓

INSERT 2-14:

- (e) "Nonaffiliated 3rd party" means a person that is not related by common ownership or affiliated by common corporate control.
- (f) "Person" has the meaning given in 15 USC 1681a (b).

(g) "Personal financial data provider" means any person, other than a consumer reporting agency, that regularly engages in whole or in part in the practice of assembling and furnishing to 3rd parties, for a fee or payment of dues, the identity of particular consumers and financial information relating to such consumers that is not generally available to the public, including information derived from any application by these consumers for an extension of credit or other nonpublic personal information, as defined in 15 USC 6809 (4), relating to these consumers.

(h) "Prescreened consumer report" means a consumer report furnished by a consumer reporting agency under authority of 15 USC 1681b (a) (3) (A) and (c) (1) (B) to a person that the consumer reporting agency has reason to believe intends to use the information in connection with any credit transaction that involves the consumer on whom the information is to be furnished and that is not initiated by this consumer.

(i) "Trigger lead" means information relating to a consumer that is furnished by a consumer reporting agency or personal financial data provider to a nonaffiliated 3rd party if all of the following apply:

1. The consumer has applied to a lender, other than the 3rd party to whom the information is furnished, for an extension of credit and the lender has provided the consumer's credit application, or information derived from or related to the consumer's credit application, to a consumer reporting agency or personal financial data provider for purposes of obtaining a consumer report or otherwise evaluating or rating the consumer's creditworthiness.

2. The information furnished to the 3rd party includes the consumer's name and address or telephone number, or other information that allows the 3rd party to identify the consumer.

3. The information furnished to the 3rd party contains, with respect to the extension of credit for which the consumer has applied under subd. 1., any loan number or other identifying number assigned to the consumer by the lender, any identification of the amount of credit for which the consumer has applied, or any other information that is related to the terms and conditions of credit for which the consumer has applied and that is not generally available to the public.

4. The consumer has not authorized the consumer reporting agency or personal financial data provider to provide the information to the 3rd party and has not initiated any credit transaction with the 3rd party.

(j) "Solicit" means the initiation of a communication to a consumer for the purpose of encouraging the consumer to purchase property, goods, or services or apply for an extension of credit. "Solicit" does not include communications initiated by the consumer or directed to the general public.

(2) (a) If any trigger lead is not a prescreened consumer report, no person may furnish the trigger lead to a nonaffiliated 3rd party unless the person reasonably believes that the 3rd party will not use the trigger lead to solicit any consumer identified in the trigger lead.

(b) Any person that furnishes a trigger lead described in par. (a) to a nonaffiliated 3rd party shall establish and maintain procedures to reasonably ensure that the trigger lead will not be used to solicit any consumer identified in the trigger lead. These procedures shall include requiring any person that obtains a trigger lead described in par. (a) to identify the user of the trigger lead and to certify, in a manner similar to that required under 15 USC 1681e (a), the purpose for which the trigger lead is obtained and that the person will not use the trigger lead to solicit any consumer identified in the trigger lead.

(c) No person that obtains a trigger lead described in par. (a) may use the trigger lead to solicit any consumer identified in the trigger lead.

(3) (a) If any trigger lead is a prescreened consumer report, a person that obtains a trigger lead and uses the trigger lead to solicit any consumer identified in the trigger lead may not utilize unfair or deceptive practices in soliciting the consumer.

(b) For purposes of this subsection, unfair or deceptive practices include all of the following:

1. Failure to state in the initial phase of the solicitation that the person soliciting is not the lender, and is not affiliated with the lender, to which the consumer has applied for an extension of credit.

2. Failure in the initial solicitation to comply with any applicable requirement under 15 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

3. Knowingly or negligently utilizing information regarding consumers who have made an election under 15 USC 1681b (e) to be excluded from prescreened consumer reports, who have registered their telephone numbers on the national do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the nonsolicitation directory under s. 100.52 (2).

4. Soliciting consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment.

5. Making false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2410/P2dn

ARG:.....

gjs

ATTN: Eric Knight

lead

Please review the attached draft carefully to ensure that it is consistent with your intent.

In our meeting on May 31, we discussed two approaches for this redraft, depending on whether a trigger is, or is not, a consumer report under the Fair Credit Reporting Act (FCRA). It occurred to me that these two approaches are not mutually inconsistent, so the attached draft incorporates both approaches.

Created s. 100.55 (2) contains provisions that apply if a trigger lead is not a "consumer report" under the FCRA. In these circumstances, the federal preemption provisions of the FCRA would not apply and the state would be free to restrict the dissemination or use of trigger leads. The provisions of s. 100.55 (2) would also cover data assemblers that are not consumer reporting agencies.

Created s. 100.55 (3) contains provisions that apply if a trigger lead is a "consumer report" under the FCRA. The provisions of created s. 100.55 (3) are modeled in part on the Connecticut legislation provided to me. If trigger leads are considered "consumer reports" under the FCRA, this state is limited in its ability to devise and enforce legislation related to these trigger leads. If s. 100.55 (3) of the attached bill were challenged on federal preemption grounds, I believe it would be difficult to predict how a court would rule on the challenge. The FCRA covers not just the distribution of consumer reports but also use of consumer reports by those who receive them from consumer reporting agencies. While the FCRA recognizes a general authority of states to enact and enforce legislation relating to the collection, distribution, and use of consumer information if this legislation is not inconsistent with the FCRA, there are certain subject areas within the FCRA in which the intent of the FCRA is to "occupy the field" and preempt all state legislation related to that subject area. Prescreened consumer reports is one such area. The FCRA states, "No requirement or prohibition may be imposed under the laws of any State - (1) with respect to any subject matter regulated under - (A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports; ... (D) section 1681m (d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit ... transaction that is not initiated by the consumer and that consists of a firm offer of credit" 15 USC 1681t (b). Accordingly, under this provision of the FCRA,

the entire subject area of *use* of prescreened consumer reports is preempted, suggesting that created s. 100.55 (3) in the attached draft may be found to be preempted if challenged in court. (As discussed previously, federal law also specifically limits states from attempting to modify the "firm offer of credit" definition. 15 USC 1681t (c).) However, the FCRA also specifically provides that 15 USC 1681m, relating to use of prescreened consumer reports, "is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit ... transaction that is not initiated by the consumer." 15 USC 1681m (d) (4). It is difficult to predict how a court would assess created s. 100.55 (3) in the attached draft in light of 15 USC 1681m (d) (4) and 1681t (b) (1) (D).

The provisions of the attached draft relating to investigative and enforcement authority should be found consistent with the general scope and purpose of the FCRA. See, e.g., 15 USC 1681s (c). Also, federal law already prohibits a person from using or obtaining a consumer report for any purpose other than an authorized purpose and requires that the purpose be certified to the consumer reporting agency by the prospective user. 15 USC 1681b (f). The state is authorized to investigate and enforce violations of this provision of the FCRA. See 15 USC 1681s (c).

If any portion of the attached bill is found to be preempted and unenforceable, that portion would be severable from the remainder of the bill. See s. 990.001 (11). ✓

The most challenging part of this draft was creating the various definitions. Please review these carefully.

After I completed this draft, I spoke with Sandra McCarthy at the Federal Trade Commission regarding my letter dated June 7, 2007. The FTC considers trigger leads to be permissible prescreened consumer reports and, while the FTC is concerned with unfair or deceptive practices by those who obtain trigger leads and also with do-not-call violations by those using trigger leads, the FTC is taking no broad enforcement action related to providing trigger leads. My understanding of the FTC's position is that the FCRA allows a consumer reporting agency to provide inquiry information, loan application numbers, loan amount information, and other loan-related information so long as the information does not identify the relationship of the consumer with a *particular creditor*. The FTC's position is also that the FCRA allows telephone numbers to be released in prescreened consumer reports. Ms. McCarthy suggested that the factual scenario described in my letter was not entirely accurate, but I am still unclear as to the exact process under which the trigger lead information is assembled and furnished to other lenders (who then solicit the original loan applicant). Based upon my conversation with Ms. McCarthy, created s. 100.55 (2) in the attached draft may have little or no practical application. Also, to the extent the FTC's position on trigger leads may be inconsistent with the FCRA, state enforcement action is possible under the FCRA, although I imagine it would be very difficult to enforce the FCRA without the support of the FTC.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2410/P2dn
ARG:cjs:rs

July 5, 2007

ATTN: Eric Knight

Please review the attached draft carefully to ensure that it is consistent with your intent.

In our meeting on May 31, we discussed two approaches for this redraft, depending on whether a trigger lead is, or is not, a consumer report under the Fair Credit Reporting Act (FCRA). It occurred to me that these two approaches are not mutually inconsistent, so the attached draft incorporates both approaches.

Created s. 100.55 (2) contains provisions that apply if a trigger lead is not a "consumer report" under the FCRA. In these circumstances, the federal preemption provisions of the FCRA would not apply and the state would be free to restrict the dissemination or use of trigger leads. The provisions of s. 100.55 (2) would also cover data assemblers that are not consumer reporting agencies.

Created s. 100.55 (3) contains provisions that apply if a trigger lead is a "consumer report" under the FCRA. The provisions of created s. 100.55 (3) are modeled in part on the Connecticut legislation provided to me. If trigger leads are considered "consumer reports" under the FCRA, this state is limited in its ability to devise and enforce legislation related to these trigger leads. If s. 100.55 (3) of the attached bill were challenged on federal preemption grounds, I believe it would be difficult to predict how a court would rule on the challenge. The FCRA covers not just the distribution of consumer reports but also use of consumer reports by those who receive them from consumer reporting agencies. While the FCRA recognizes a general authority of states to enact and enforce legislation relating to the collection, distribution, and use of consumer information if this legislation is not inconsistent with the FCRA, there are certain subject areas within the FCRA in which the intent of the FCRA is to "occupy the field" and preempt all state legislation related to that subject area. Prescreened consumer reports is one such area. The FCRA states, "No requirement or prohibition may be imposed under the laws of any State - (1) with respect to any subject matter regulated under - (A) subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports; ... (D) section 1681m (d) of this title, relating to the duties of persons who use a consumer report of a consumer in connection with any credit ... transaction that is not initiated by the consumer and that consists of a firm offer of credit" 15 USC 1681t (b). Accordingly, under this provision of the FCRA,

the entire subject area of *use* of prescreened consumer reports is preempted, suggesting that created s. 100.55 (3) in the attached draft may be found to be preempted if challenged in court. (As discussed previously, federal law also specifically limits states from attempting to modify the "firm offer of credit" definition. 15 USC 1681t (c).) However, the FCRA also specifically provides that 15 USC 1681m, relating to use of prescreened consumer reports, "is not intended to affect the authority of any Federal or State agency to enforce a prohibition against unfair or deceptive acts or practices, including the making of false or misleading statements in connection with a credit ... transaction that is not initiated by the consumer." 15 USC 1681m (d) (4). It is difficult to predict how a court would assess created s. 100.55 (3) in the attached draft in light of 15 USC 1681m (d) (4) and 1681t (b) (1) (D).

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Aaron R. Gary
Legislative Attorney
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E-mail: aaron.gary@legis.wisconsin.gov

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

8/16

The son Eric Knight

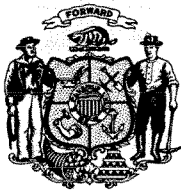
6-3007

• Rep. Newcome ✓

• one change - p. 5 l. 25 - p. 6 l. 1
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• make /



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-2410/12 1

ARG:cjs:rs

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2 change - p. 3 & pp. 5/6

Repeal cat

1 AN ACT *to create* 100.55 of the statutes; **relating to:** furnishing or using certain
2 consumer loan information to make solicitations and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current federal law, the Fair Credit Reporting Act (FCRA) imposes requirements and restrictions on certain uses of consumer information. Under the FCRA, the definition of a "consumer report" includes any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit to be used primarily for personal, family, or household purposes. A "consumer reporting agency" is any person, including a business entity, that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third-parties.

Under the FCRA, a consumer reporting agency may furnish a consumer report only under specified circumstances. Among these circumstances, a consumer reporting agency may furnish information to a person that it has reason to believe intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer. Absent authorization by the consumer, a consumer reporting agency may furnish a

consumer report relating to a consumer in connection with a credit transaction that is not initiated by the consumer (a "prescreened consumer report") only if all of the following apply: (1) the transaction consists of a firm offer of credit; (2) the consumer reporting agency has complied with its obligations relating to maintaining a system allowing consumers to elect not to be the subject of prescreened consumer reports; and (3) the consumer has not elected to be excluded from the consumer reporting agency's prescreened consumer reports. A prescreened consumer report is limited to the name and address of the consumer, an identifier that is not unique to the consumer, and other information pertaining to the consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity. The consumer reporting agency may also furnish a record of inquiries in connection with credit transactions not initiated by the consumer for the previous one-year period.

Under the FCRA, if a person uses a prescreened consumer report in connection with a credit transaction not initiated by the consumer, the person must provide, with each written solicitation made to the consumer, a clear and conspicuous statement containing certain information, including that the person's prescreened consumer report was used in connection with the transaction, that the person received the offer of credit because the consumer satisfied certain criteria under which the consumer was selected for the offer, and that the consumer has a right not to be the subject of prescreened consumer reports and how to make this election. The user of the prescreened consumer report must also maintain on file certain information relating to the offer of credit made. In addition, each consumer reporting agency must maintain reasonable procedures designed to limit the furnishing of consumer reports to authorized purposes under the FCRA. These procedures must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Each consumer reporting agency must make a reasonable effort to verify the identity of a new prospective user and the uses certified by this prospective user prior to furnishing the user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for an authorized purpose. A person may not use or obtain a consumer report for any purpose other than an authorized purpose, as certified to the consumer reporting agency by the prospective user.

This bill imposes certain state law restrictions on the dissemination and use of trigger lead information, which restrictions vary depending on whether or not the trigger lead is a consumer report under the FCRA. The bill defines "trigger lead" as information relating to a consumer that is furnished by a consumer reporting agency or personal financial data provider to a nonaffiliated third-party if all of the following apply: (1) the consumer has applied to a lender, other than the third-party to whom the information is furnished, for an extension of credit and the lender has provided the consumer's credit application, or information derived from or related to the consumer's credit application, to a consumer reporting agency or personal financial data provider for purposes of obtaining a consumer report or otherwise

evaluating or rating the consumer's creditworthiness; (2) the information furnished to the third-party includes the consumer's name and address or telephone number, or other information that allows the third-party to identify the consumer; (3) the information furnished to the third-party contains, with respect to the extension of credit for which the consumer has applied, ~~any loan number or other identifying number assigned to the consumer by the lender,~~ any identification of the amount of credit for which the consumer has applied, or any other information that is related to the terms and conditions of credit for which the consumer has applied and that is not generally available to the public; and (4) the consumer has not authorized the consumer reporting agency or personal financial data provider to provide the information to the third-party and has not initiated any credit transaction with the third-party. The bill incorporates various federal law definitions from the FCRA. The bill also defines "personal financial data provider" as any person, other than a consumer reporting agency, that regularly engages in whole or in part in the practice of assembling and furnishing to third-parties, for a fee or payment of dues, the identity of particular consumers and financial information relating to such consumers that is not generally available to the public, including information derived from any application by these consumers for an extension of credit or other nonpublic personal information, as defined under the federal Gramm-Leach-Bliley Act, relating to these consumers.

Under the bill, if any trigger lead is not a prescreened consumer report under federal law, a person, which includes a business entity, may not furnish the trigger lead to a nonaffiliated third-party unless the person reasonably believes that the third-party will not use the trigger lead to solicit any consumer identified in the trigger lead. Any person that furnishes such a trigger lead to a nonaffiliated third-party must establish and maintain procedures to reasonably ensure that the trigger lead will not be used to solicit any consumer identified in the trigger lead. A person that obtains such a trigger lead may not use the trigger lead to solicit any consumer identified in the trigger lead.

Under the bill, if any trigger lead is a prescreened consumer report under federal law, a person that obtains a trigger lead and uses the trigger lead to solicit any consumer identified in the trigger lead may not utilize unfair or deceptive practices in soliciting the consumer. Unfair or deceptive practices include all of the following: (1) failure to state in the initial phase of the solicitation that the person soliciting is not the lender, and is not affiliated with the lender, to which the consumer has applied for an extension of credit; (2) failure in the initial solicitation to comply with any applicable requirement under the FCRA relating to prescreened consumer reports; (3) knowingly or negligently utilizing information regarding consumers who have elected to be excluded from being the subject of prescreened consumer reports or who have registered under the federal or state do-not-call list programs; (4) soliciting consumers with offers of certain rates, terms, and costs, with intent to subsequently raise the rates or change the terms to the consumers' detriment; and (5) making false or misleading statements in connection with a credit transaction that is not initiated by the consumer.

Any person who violates any prohibition or requirement under the bill may be required to forfeit not less than \$100 nor more than \$1,000 for each violation. The Department of Agriculture, Trade and Consumer Protection (DATCP) must investigate violations of the prohibitions or requirements under the bill, and DATCP, the attorney general, or any district attorney may bring an action for these violations. In addition, any person aggrieved by a violation may bring a civil action for twice the amount of actual damages caused by the violation or \$500, whichever is greater.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 100.55 of the statutes is created to read:

2 **100.55 Furnishing or using certain consumer loan information to**
3 **make solicitations. (1)** In this section:

4 (a) "Consumer" has the meaning given in 15 USC 1681a (c).

5 (b) "Consumer report" has the meaning given in 15 USC 1681a (d).

6 (c) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

7 (d) "Lender" means any of the following:

8 1. A financial institution, as defined in s. 214.01 (1) (jn).

9 2. A finance company licensed under ss. 138.09 or 218.0101 to 218.0163.

10 3. A mortgage banker, loan originator, or mortgage broker registered under s.
11 224.72.

12 4. Any other person, not identified in subds. 1. to 3., the primary business of
13 which is to make loans or engage in lending activities in this state.

14 (e) "Nonaffiliated 3rd party" means a person that is not related by common
15 ownership or affiliated by common corporate control.

16 (f) "Person" has the meaning given in 15 USC 1681a (b).

17 (g) "Personal financial data provider" means any person, other than a
18 consumer reporting agency, that regularly engages in whole or in part in the practice

1 of assembling and furnishing to 3rd parties, for a fee or payment of dues, the identity
2 of particular consumers and financial information relating to such consumers that
3 is not generally available to the public, including information derived from any
4 application by these consumers for an extension of credit or other nonpublic personal
5 information, as defined in 15 USC 6809 (4), relating to these consumers.

6 (h) "Prescreened consumer report" means a consumer report furnished by a
7 consumer reporting agency under authority of 15 USC 1681b (a) (3) (A) and (c) (1)
8 (B) to a person that the consumer reporting agency has reason to believe intends to
9 use the information in connection with any credit transaction that involves the
10 consumer on whom the information is to be furnished and that is not initiated by this
11 consumer.

12 (i) "Trigger lead" means information relating to a consumer that is furnished
13 by a consumer reporting agency or personal financial data provider to a nonaffiliated
14 3rd party if all of the following apply:

15 1. The consumer has applied to a lender, other than the 3rd party to whom the
16 information is furnished, for an extension of credit and the lender has provided the
17 consumer's credit application, or information derived from or related to the
18 consumer's credit application, to a consumer reporting agency or personal financial
19 data provider for purposes of obtaining a consumer report or otherwise evaluating
20 or rating the consumer's creditworthiness.

21 2. The information furnished to the 3rd party includes the consumer's name
22 and address or telephone number, or other information that allows the 3rd party to
23 identify the consumer.

24 3. The information furnished to the 3rd party contains, with respect to the
25 extension of credit for which the consumer has applied under subd. 1., any loan

1 ~~number or other identifying number assigned to the consumer by the lender,~~ any
2 identification of the amount of credit for which the consumer has applied, or any
3 other information that is related to the terms and conditions of credit for which the
4 consumer has applied and that is not generally available to the public.

5 4. The consumer has not authorized the consumer reporting agency or personal
6 financial data provider to provide the information to the 3rd party and has not
7 initiated any credit transaction with the 3rd party.

8 (j) "Solicit" means the initiation of a communication to a consumer for the
9 purpose of encouraging the consumer to purchase property, goods, or services or
10 apply for an extension of credit. "Solicit" does not include communications initiated
11 by the consumer or directed to the general public.

12 (2) (a) If any trigger lead is not a prescreened consumer report, no person may
13 furnish the trigger lead to a nonaffiliated 3rd party unless the person reasonably
14 believes that the 3rd party will not use the trigger lead to solicit any consumer
15 identified in the trigger lead.

16 (b) Any person that furnishes a trigger lead described in par. (a) to a
17 nonaffiliated 3rd party shall establish and maintain procedures to reasonably
18 ensure that the trigger lead will not be used to solicit any consumer identified in the
19 trigger lead. These procedures shall include requiring any person that obtains a
20 trigger lead described in par. (a) to identify the user of the trigger lead and to certify,
21 in a manner similar to that required under 15 USC 1681e (a), the purpose for which
22 the trigger lead is obtained and that the person will not use the trigger lead to solicit
23 any consumer identified in the trigger lead.

24 (c) No person that obtains a trigger lead described in par. (a) may use the trigger
25 lead to solicit any consumer identified in the trigger lead.

1 (3) (a) If any trigger lead is a prescreened consumer report, a person that
2 obtains a trigger lead and uses the trigger lead to solicit any consumer identified in
3 the trigger lead may not utilize unfair or deceptive practices in soliciting the
4 consumer.

5 (b) For purposes of this subsection, unfair or deceptive practices include all of
6 the following:

7 1. Failure to state in the initial phase of the solicitation that the person
8 soliciting is not the lender, and is not affiliated with the lender, to which the
9 consumer has applied for an extension of credit.

10 2. Failure in the initial solicitation to comply with any applicable requirement
11 under 15 USC 1681b (a), (c), (e), and (f), 1681e (a), and 1681m (d).

12 3. Knowingly or negligently utilizing information regarding consumers who
13 have made an election under 15 USC 1681b (e) to be excluded from prescreened
14 consumer reports, who have registered their telephone numbers on the national
15 do-not-call registry as provided in 47 CFR 64.1200, or who are listed in the
16 nonsolicitation directory under s. 100.52 (2).

17 4. Soliciting consumers with offers of certain rates, terms, and costs, with
18 intent to subsequently raise the rates or change the terms to the consumers'
19 detriment.

20 5. Making false or misleading statements in connection with a credit
21 transaction that is not initiated by the consumer.

22 (4) (a) Any person who violates sub. (2) or (3) may be required to forfeit not less
23 than \$100 nor more than \$1,000 for each violation.

24 (b) The department shall investigate violations of this section. The
25 department, the attorney general, or any district attorney may on behalf of the state:

Basford, Sarah

From: Knight, Eric
Sent: Tuesday, September 04, 2007 1:04 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-2410/1 Topic: Use of nonpublic loan information for solicitations; trigger leads

Please Jacket LRB 07-2410/1 for the ASSEMBLY.

Barman, Mike

From: Barman, Mike
Sent: Friday, September 28, 2007 12:03 PM
To: Gary, Aaron
Subject: RE: AB 502 - Fiscal Estimate

Aaron,

Since the bill is introduced we also need written permission from the the primary sponsor's office (Representative Newcomer).

Mike

From: Gary, Aaron
Sent: Friday, September 28, 2007 12:00 PM
To: Barman, Mike
Subject: FW: AB 502 - Fiscal Estimate

Mike,

Given the e-mail chain below, can you please proceed with the fiscal estimate process for the bill? thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Miller, Steve
Sent: Friday, September 28, 2007 11:50 AM
To: Gary, Aaron
Subject: RE: AB 502 - Fiscal Estimate

Yes, it is OK.
Steve

From: Gary, Aaron
Sent: Friday, September 28, 2007 11:40 AM
To: Miller, Steve
Subject: FW: AB 502 - Fiscal Estimate

Steve,

Can I have your permission to go ahead and have a fiscal estimate prepared for this bill, based on the e-mail chain below? Thanks. Aaron

Aaron R. Gary
Legislative Attorney

09/28/2007

Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Friday, September 28, 2007 11:39 AM
To: Barman, Mike; Knapp, Barb H - DATCP
Cc: 'Jenkins, Janet A - DATCP'; LaBelle, Vicky L - DOA
Subject: RE: AB 502 - Fiscal Estimate

Barb,

In retrospect, I agree that I should have put an FE tag on the bill. I will attempt to rectify the situation.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Barman, Mike
Sent: Friday, September 28, 2007 9:42 AM
To: Knapp, Barb H - DATCP; Gary, Aaron
Cc: Jenkins, Janet A - DATCP; LaBelle, Vicky L - DOA
Subject: RE: AB 502 - Fiscal Estimate

Barb,

I forwarded your e-mail to the LRB drafting attorney of AB 502 (LRB -2410/1) ... Aaron Gary (261-6926). You were not assigned to do a fiscal estimate on this bill because it was not "tagged" as requiring a fiscal estimate. After receiving this e-mail I imagine Aaron will take another look at the bill and get back to you.

Let me know if I can be of further assistance.

Mike Barman (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

(608) 266-3561 / mike.barman@legis.wisconsin.gov

09/28/2007

From: Knapp, Barb H - DATCP
Sent: Friday, September 28, 2007 9:30 AM
To: Barman, Mike
Cc: Jenkins, Janet A - DATCP; LaBelle, Vicky L - DOA
Subject: AB 502 - Fiscal Estimate

Good Morning Mike,

AB502 which was introduced, requires DATCP to investigate violations of the prohibitions or requirements under the bill. We have not been asked for a fiscal estimate and believe we should be. Who should I contact on this one?

**Thanks,
Barb**

09/28/2007

Barman, Mike

From: Barman, Mike
Sent: Monday, October 01, 2007 1:56 PM
To: Gary, Aaron
Subject: RE: AB 502 - Fiscal Estimate

Looks like were good to go ... I will go ahead and submit the request to DOA.

Mike

From: Gary, Aaron
Sent: Monday, October 01, 2007 1:44 PM
To: Barman, Mike
Subject: FW: AB 502 - Fiscal Estimate

Mike,

I think that, with this and the other e-mail, we can not go ahead with this fiscal estimate. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Knight, Eric
Sent: Monday, October 01, 2007 12:17 PM
To: Gary, Aaron
Subject: RE: AB 502 - Fiscal Estimate

Yes, go ahead

Eric Knight
Office of Rep. Scott Newcomer
608-266-3007
888-529-0033
Eric.Knight@legis.wi.gov

From: Gary, Aaron
Sent: Friday, September 28, 2007 12:12 PM
To: Knight, Eric
Subject: RE: AB 502 - Fiscal Estimate

Also, I do need your office's permission to rectify my oversight and allow DATCP to proceed with preparing the fiscal estimate. (Without that permission, DATCP can prepare their fiscal estimate but it won't go in our file.) Do I have your office's permission to let the normal fiscal estimate process proceed? thanks. Aaron

10/01/2007

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Friday, September 28, 2007 11:47 AM
To: Knight, Eric
Subject: FW: AB 502 - Fiscal Estimate

Eric,

I received the e-mail below from DATCP. In determining not to put a fiscal estimate (FE) tag on AB-502, I overlooked the provision cited by DATCP. I agree with DATCP that the bill should have had a FE tag (prompting DATCP to prepare a fiscal estimate) and I have taken steps to rectify that.

The reason the FE tag is necessary is because the bill *requires* DATCP to investigate violations. If this authority were permissive rather than mandatory, the fiscal estimate might not be necessary. Let me know if you have any questions or if you want an amendment prepared.

Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Friday, September 28, 2007 11:39 AM
To: Barman, Mike; Knapp, Barb H - DATCP
Cc: 'Jenkins, Janet A - DATCP'; LaBelle, Vicky L - DOA
Subject: RE: AB 502 - Fiscal Estimate

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Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

10/01/2007

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Sent: Friday, September 28, 2007 9:42 AM
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Cc: Jenkins, Janet A - DATCP; LaBelle, Vicky L - DOA
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Let me know if I can be of further assistance.

Mike Barman (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

(608) 266-3561 / mike.barman@legis.wisconsin.gov

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Barb**

10/01/2007